U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30294309

Date: MAR. 12, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a partner in a capital management firm, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he met the initial evidence requirement for this classification by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3). They also dismissed a subsequent motion to reopen. The Petitioner then filed an appeal of the Director's motion decision, which we dismissed as moot. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss both motions.

I. ANALYSIS

A. Timeliness of Motions

A motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, with an additional 3 days added when notice of the decision is sent by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). There is no provision in the relevant statute or regulations that allows us to extend this period. In this case, our appeal decision was issued on July 28, 2023, and the Petitioner filed this motion on September 11, 2023, 45 days later. So the motion to reconsider was not filed within the prescribed period and will be dismissed.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility

for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We may, in our discretion, excuse a failure to file a motion to reopen within the prescribed period where a petitioner can demonstrate that the delay was reasonable and beyond their control. 8 C.F.R. § 103.5(a)(1)(i). Here, the Petitioner acknowledges that his motion to reopen was filed late, but requests that this delay be excused because he was away from his permanent mailing address during the response period and immediately notified his attorney upon returning and reading the appeal decision. In support of this statement, he submits airline ticket receipts, a short-term rental agreement, and pages from a wedding announcement website showing that he and his wife were in Hawaii for their wedding and honeymoon for more than two months. However, he does not explain why he did not take reasonable steps to ensure that he received notification of any action taken in this matter while he was away for such an extended period. In addition, in the previous matter we issued a notice of self-representation to the Petitioner and his representative a month prior to issuing our appeal decision, as the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, was not properly completed. But there is no indication in United States Citizenship and Immigration Services (USCIS) records that either party took any measures after receiving this notice to make certain that they would receive notice of any further actions. We therefore conclude that the Petitioner's delay in filing this motion to reopen was neither reasonable nor beyond his control.

Despite our conclusion above, however, we will exercise our discretion to reopen our most recent decision. In that decision, we noted that while the Petitioner referred in his brief to a motion to reopen filed and dismissed subsequent to the Director's denial of his petition, he did not include a copy of the motion decision or any other evidence that the Director had dismissed his subsequent motion. Further, USCIS records showed only that the denial of the petition had been reopened, indicating that the matter remained open and the Director had not issued a decision. With his current motion, the Petitioner now includes a copy of the Director's motion decision, demonstrating that the appeal was timely filed in response to a dismissal of that motion.[1] We will therefore review the merits of the Petitioner's claims on appeal.

B. Individual of Exceptional Ability

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

[1] We note that when completing Form I-290B, Notice of Appeal or Motion, for his initial motion to reopen, the Petitioner filled in the business or organization box in Part 1 with the name of his employer at the time, [redacted], despite not including this business name on Form I-140, Immigrant Petition for Alien Worker. In addition, when filing his appeal, the Petitioner provided the receipt number and decision date for his original petition in Part 2 of Form I-290B, not those of his dismissed motion to reopen which was the subject of the appeal, and did not otherwise include the motion information in his brief. Because of these errors, on appeal we were unable to locate the receipt number or decision for the motion to reopen in USCIS records.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." It also sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

At the time of filing, the Petitioner was a partner in a capital management firm, specializing in investments in early stage technology companies. In his initial decision, the Director determined that the Petitioner met only two of the evidentiary criteria at 8 C.F.R. 204.5(h)(3), pertaining to his participation as a judge of the work of others and his leading or critical role for organizations with a distinguished reputation. Since the Petitioner had not established that he met the initial evidence requirement as an individual of exceptional ability, the Director did not conduct a final merits determination of the totality of the evidence.

In his motion to reopen, the Petitioner focused on the criterion at 8 C.F.R. § 204.5(h)(3)(iii). That evidentiary criterion requires evidence of published material about a petitioner and their work in the field of endeavor, published in a professional or major trade publication or other major medium. Specifically, the Petitioner asserted that *Venture Capital Journal* (VCJ), a publication in which an article about him and his work appeared, qualified as either a professional or major trade publication. In support of this motion, the Petitioner submitted material from the libraries of Harvard University and the University of Chicago, a social media profile of the author of the article about him, metrics concerning a journal titled *Venture Capital*, and pages from VCJ's website. He asserted that VCJ qualifies as a major trade publication, applying a definition of "major trade publication" from the U.S. Library of Congress. However, the Director concluded that the Petitioner had not established that VCJ was a major trade publication, as the record lacked circulation and comparative data showing that it is a major publication in its field.

On appeal, the Petitioner reiterated its previous assertions concerning VCJ's qualification as a professional or major trade publication, stressing that leading business schools "believe it to be one of the leading trade publications with the private equity and venture capital industries." It also again refers to citation metrics regarding *Venture Capital*, which it misidentifies as VCJ, as well as other

evidence showing that its website receives thousands of visitors per day. The citation information pertains to a journal published by Routledge (which appears to be a subsidiary or division of Taylor & Francis), whereas VCJ's website states that it is published by PEI. As for the number of website visits, we agree with the Director that the record lacks comparative data to show that VCJ is widely read in the field such it qualifies as a major trade publication. While the evidence establishes that VCJ is a publication focusing on the venture capital industry, and that two respected business schools include it in long lists of reference material about the venture capital industry, it does not demonstrate that it qualifies as a professional, major trade or other major medium per this criterion.

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the entire record and conclude that it does not establish that the Petitioner has the acclaim and recognition required for the classification sought.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he has not established eligibility as an individual of extraordinary ability. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.